

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed on November 10, 2009 (Paper No. 20091109). Upon entry of this response, claims 2-11, 13-14, 18, 20-22, 24-25, 29-41, 45-54, and 56-72 are pending in the application. Claims 2-5, 9-11, 13, 29, and 49 are allowed. In this response, claims 14, 20-22, 31, 37, and 63 have been amended. Applicants respectfully request that the amendments being filed herewith be entered and request reconsideration and allowance of all pending claims.

I. Claim Objections

Claims 20-21, 50-51, and 67 have been objected to for various informalities. Claim 20 has been objected to because "the first performance parameter' should be 'the second performance parameter'..." Claim 21 has been objected to because "a signal-to-noise' should be 'the signal-to-noise'..." Claims 50 and 51 are objected to for depending from objected claim 21. Claims 20 and 21 have been amended accordingly. In view of the amendments, Applicants request that the objections of claims 20-21 and 50-51 be withdrawn.

With regard to claim 67, the Office Action alleges on page 2 that "'the first performance parameter' should be 'the second performance parameter' because only the requesting step or elements 48-52 shown in Figure 4 are capable of selecting the second performance parameter..." However, claim 67 does not recite selecting a first parameter, but instead recites:

67. The method of claim 63, further comprising the step of:
repeating the receiving, determining and requesting steps until the first performance parameter of the received signal is marginally supported.

where base claim 63 recites:

63. A method of adjusting transmit performance parameters over a digital subscriber line (DSL), the method performed in a first DSL modem, the method comprising the steps of:
negotiating, with a second DSL modem, a value for a first performance parameter;
receiving, from the second DSL modem, a signal exhibiting the first

performance parameter;
determining a signal-to-noise-ratio for the received signal; and
requesting, from the second DSL modem, an adjustment in a second performance parameter associated with the received signal based at least in part upon the signal-to-noise-ratio, wherein the second performance parameter is transmit data rate, and wherein the second performance parameter is different from the first performance parameter.

Thus, Applicants respectfully submit that the suggested correction is not required and that claim 67 is in condition for allowance. Accordingly, Applicants request that the objection of claim 67 be withdrawn.

II. Claim Rejections under 35 U.S.C. §112, Second Paragraph

Claims 6-8, 14, 18, 20-22, 24-25, 30-41, 45-48, 50-54, and 56-72 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

A. Claims 6-8

To begin, the Office Action alleges on page 3 that:

Claim 6 depends from claim 2 and recites that the negotiating step is performed after the receiving step and before the determining step is vague and indefinite because the precedent independent claim 2 started with the negotiating step, and then the receiving step.

Applicants respectfully disagree. "[T]he requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available." MPEP §2173.02. See also *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1366, 71 USPQ2d 1081, 1089 (Fed. Cir. 2004) ("The requirement to 'distinctly' claim means that the claim must have a meaning discernible to one of ordinary skill in the art when construed according to correct principles. Only when a claim remains insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite.").

While claim 2 recites "the method comprising the steps of: negotiating...; receiving...; determining...; and requesting..." claim 2 does not require that the steps be performed in only

recited order. Dependent claim 6 makes this clear by reciting that "said negotiating step is performed after the receiving step and before the determining step." Thus, Applicants respectfully submit that the language of claim 6 has clear and precise meaning that is discernible to one of ordinary skill in the art when construed in the context of base claim 2. Accordingly, Applicants submit that claims 6-8 define the invention in the manner required by 35 U.S.C. § 112 and respectfully request that the rejection be withdrawn.

B. Claims 14, 18, 20-21, 30, and 50-53

The Office Action alleges on page 3 that "none of the rest of the means or steps in each of the claims correspond to the determined signal-to-noise-ratio." Claim 14 has been amended. In view of the amendment, Applicants submit that claims 14, 18, 20-21, 30, and 50-53 define the invention in the manner required by 35 U.S.C. § 112. Accordingly Applicants respectfully request that the rejection be withdrawn.

C. Claims 22, 24-25, 28, 54, and 56

The Office Action alleges on page 3 that "none of the rest of the means or steps in each of the claims correspond to the determined signal-to-noise-ratio." Claim 22 has been amended. In view of the amendment, Applicants submit that claims 22, 24-25, 28, 54, and 56 define the invention in the manner required by 35 U.S.C. § 112. Accordingly Applicants respectfully request that the rejection be withdrawn.

D. Claims 31-36, 57, and 59-62

The Office Action alleges on page 3 that "none of the rest of the means or steps in each of the claims correspond to the determined signal-to-noise-ratio." Claim 31 has been amended. In view of the amendment, Applicants submit that claims 31-36, 57, and 59-62 define the invention in the manner required by 35 U.S.C. § 112. Accordingly Applicants respectfully request that the rejection be withdrawn.

E. Claims 37-41 and 45-48

The Office Action alleges on page 3 that "none of the rest of the means or steps in each of the claims correspond to the determined signal-to-noise-ratio." Claim 37 has been amended. In view of the amendment, Applicants submit that claims 37-41 and 45-48 define the invention in the manner required by 35 U.S.C. § 112. Accordingly Applicants respectfully request that the rejection be withdrawn.

F. Claims 63-64 and 66-72

The Office Action alleges on page 3 that "none of the rest of the means or steps in each of the claims correspond to the determined signal-to-noise-ratio." Claim 63 has been amended. In view of the amendment, Applicants submit that claims 63-64 and 66-72 define the invention in the manner required by 35 U.S.C. § 112. Accordingly Applicants respectfully request that the rejection be withdrawn.

III. Allowable Subject Matter

Applicants thank the Examiner for allowance of claims 2-5, 9-11, 13, 29, and 49, as noted on page 4 of the Office Action. In addition, Applicants acknowledge the Examiner's conclusions that the claims 6-8, 14, 18, 20-22, 24-25, 30-41, 45-48, 50-54, and 56-72 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in the Office Action. Applicants also acknowledge the Examiner's conclusions that the claims 20-21, 50-51, and 67 would be allowable if rewritten to overcome the objections set forth in the Office Action. Applicants assume that the Examiner has now made all relevant art of record, and that the art now of record reflects the results of a thorough search of the embodiments of the specification as well as the claims, as required by MPEP 904.

IV. Amendment to the Specification

The specification has been amended to correct a typographical error. Applicants respectfully assert that no new matter has been added by the amendment, and request the Examiner to enter the above amendments to the specification.

CONCLUSION

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 2-11, 13-14, 18, 20-22, 24-25, 29-41, 45-54, and 56-72 be allowed to issue. Any statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,

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